

**Village of Cold Spring Zoning Board of Appeals  
85 Main Street, Cold Spring New York 10516  
Phone (845) 265-3611  
Public Hearings**

December 17, 2015

Members present: Chairman, Gregory Gunder members; Alison Anthoine, Elliott Hammond and John Martin (arrived at 7:48 PM)

Chairman G. Gunder opened the meeting at 7:32 P.M. by introducing the Board members and apologizing to Mr. and Mrs. Santos for mixing up their address in the public notice. The correct address for of the house which was destroyed by fire should have been 54 not 24 Parrott St.

**Public hearing Darrin and Melissa Santos, 54 Main St.**

The Applicants requested a side yard and front yard variance, as they were rebuilding their home, following a fire, in the same footprint as the original structure. The original home was a non-conforming structure in regard to its front and side yard setbacks. The Applicants presented the Board with the return request receipts from the neighboring properties to indicate proper notice of the hearing was provided to the neighbors.

Vincent Leto from Westchester Modular homes presented the home-replacement proposal by referencing to surveys provided and noting that the original front porch was 14.3 feet from the front property line, and it will now be 14.6 feet. The applicant and the board decided that the Section 134-7(C)(4) would be used for this variance, as opposed to the Special Permit code section. A 10.7 foot variance is requested for the front yard set back.

The Board noted that the lot falls under the small lot classification, 134-17(E). The side yard variances are needed on both sides of the property, namely, 3.0 feet on the north side and 8.0 feet on south side. The proposed side yard setbacks will total 11.0 feet. With the small lot calculation, the required setback would be 15.65 feet with the variance requested of 4.65 feet.

The shed currently on the lot has been there, and no violations have been assessed against it.

**Public comments:**

- Jeff Barrett, 56 Parrott St. - noted that it seems like the replacement home is to be erected in the original home's footprint, and he inquired what the procedure is to grant a variance? G. Gunder noted the Board will review the each of the 5 criteria and then make a balancing statement based on the review of the 5 criteria.
- Melissa Santos – asked to the Board to explain its discussion of why the small lot code provision was deemed to apply in this case. Chairman G. Gunder explained that if a lot is less than 75 feet in width, the home owner does not have to meet the 10 foot setback rule; rather, in such a case, 7.5 foot minimum side yard setbacks must be demonstrated, otherwise, the applicant must show a minimum combined total side yard setback by multiplying the number of feet in the width of the front property line by 4 inches to obtain the total minimum side yard setback for the property. G. Gunder explained that the zoning code defines the space in which an applicant is permitted to build on a particular lot.

- Diana Barrett, 56 Parrott St. noted the roof line of the homes on that side of Parrott St. are pretty much the same height, and inquired whether the proposed home would be the same approximate height of the neighboring houses on the street? Mr. Leto responded that the house will be same height as the other houses on the street.

E. Hammond moved to close the public hearing and A. Anthoine seconded the motion. The public hearing was closed at 8:05 PM by a unanimous vote.

The board reviewed the five criteria questions as follows:

1. Can the benefit sought by the applicant be achieved by any other feasible means? The Board members discussed and agreed that it could not. Due to the lot's narrow dimension, it would not be feasible to replace the original, similar-sized house, other than on the existing footprint, which is the proposal by the applicant's builder.
2. The Proposed application will/will not produce and undesirable change in the character of the neighborhood. The Board agreed that it will not. The replacement house, as demonstrated by the architectural diagrams and surveys submitted, was consistent with the neighborhood and consistent with the shape and size of the original home. The front yard setback will be greater than what was there before.
3. Whether the requested variance is substantial? The front and side yards variances are substantial, but not greater than what was there before. The Board members agreed that re-building in the foot print of the original house would be consistent with the location of neighboring homes, on their own lots, on the street.
4. The proposed variance will or will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district? The Board agreed that it will not and noted there has been no evidence or comment indicating any negative impact with the lot location of the new proposed dwelling, as it is in the same footprint as the original structure.
5. Whether the alleged difficulty was self-created? The Board members agreed that it was not. The former dwelling was destroyed by a fire and will be replaced on the same footprint.

The Board made the following balancing statement in response to the above five questions:

After a detailed review of each area variance criteria the board finds that it is granting minimum variances necessary to complete this project. The only variance that appears to be substantial is the front yard setback and it is mitigated by the fact that other dwellings in the neighborhood have similar front yard setbacks. The two side yards set backs combined are substantial but the small, narrow non-conforming lot requires the variances that are sought in order to build a replacement home on the same footprint as the original structure.

In balancing the findings as to the five variance criteria, the Board finds adequate support for granting resolution 04-2015

A. Anthoine moved to vote on the proposed resolution to grant the variance and J. Martin seconded the motion.

A roll call vote was taken with the following results:

J. Martin Yes

A. Anthoine yes  
E. Hammond yes  
G. Gunder yes.

2015 Variances are granted for 54 Parrott St. for a side yard setback of 3.63 feet and a front yard setback of 10.3 feet.

**Public Hearing for Sarah DeFranco, 230 Main St.**

The applicant proposed building a new residential home on a vacant lot located at 230 Main St. The Applicant presented the return request receipts to the Board, which indicated proper notice of the proposed project to the neighboring property owners.

Vincent Leto from Westchester Modular Homes represented the applicant and reviewed the proposal, noting that a 9.3' front yard setback variance was needed on the Main St. side of the property. The lot is a corner lot and therefore has two front yards.

The board opened the meeting for public comment.

Suzanne Robertson, Main St. – inquired that in the event the HDRB made changes to the porch, whether the ZBA would have to be notified of such changes? The Board responded that the answer would be “yes” if a new porch design increased its size, potentially warranting a larger variance.

A. Anthoine moved to close the public hearing and J. Martin seconded the motion. The public hearing closed at 8:48 P.M. by a unanimous vote.

1. Can the benefit sought by the applicant be achieved by any other feasible means? The Board members agreed that it could but it would be impractical and out of character with other houses on the street.
2. Will or will not produce an undesirable change be in the character of the neighborhood? The Board members agreed that it will not be an undesirable change. The proposed structures are have a minimal lot coverage of 20% with the he proposed house being in character in relation to lot size.
3. Whether the requested variance is substantial? The Board members agreed that the front yard variance of 9.3' is substantial but is not out of character with the neighborhood.
4. Whether the proposed variance will or will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district? The Board members agreed that it will not have an adverse physical or environmental impacts to the neighborhood. The board also noted that there was no evidence or comment citing negative impact.
5. Whether the alleged difficulty was or was not self-created? The Board members agreed that it was self-created but not sufficient to be determinative.

The Board made the following balancing statement in response to the above five questions:

After a detailed review of each area variance criteria the board finds it is granting minimum variances necessary to complete the project. The only variance that appears to be substantial is the 9.3' front yard setback and it is mitigated by the proposed dwelling(s) similar setback from

the front property line as found with other dwellings in the neighborhood. In balance, the findings as to each of the five variance criteria provide support a resolution to grant the variance and permit the project to be completed.

A. Anthoine moved to vote on the resolution to grant the front yard variance of 9.3' and E. Hammond seconded the motion. A roll call vote was taken with the following results:

J. Martin Yes  
A. Anthoine yes  
E. Hammond yes  
G. Gunder yes.

Chairman G. Gunder noted that in the event the HDRB made a change to the proposed building design that affected the structure's footprint and negatively impact variances granted, the applicant would have to come back to the ZBA.

**Public hearing for James Hartford, 178 Main St.**

The Applicant, James Hartford, asked for an interpretation of Village Code 134-9(D)(4) and related special permit 134-16. Mr. Hartford felt he qualified for a special permit under Village Code 134-9(D)(4) rather than a variance since the proposed change in the structure would be consistent with the setbacks already in place. The applicant presented an old original photo of the building as it appeared on Main Street approximately 100 years ago. The photo shows porches going down Main Street. Most of the porches in the photo are covered. Mr. Hartford also had a letter of intent to sell municipal property located in the front of the building at 178 Main St., dated December 16, 2015, from the Mayor of the Village of Cold, Dave Merandy. Mr. Hartford requested that the board view his proposal as an existing condition, and noted that he would be adding insulation to make the building a passive structure.

Mr. Hartford noted on his application that the building conforms to the average set back and no change of use would be needed, as it would remain office space. Mr. Hartford sought the Board's "interpretation" of 134-9(D)(4), regarding such section's purpose and applicability to his project. Mr. Hartford noted that a special permit, as defined under § 134-16, would not be necessary as no change of use in the premises was sought. The Board reviewed and discussed the interpretation of code sections 134-9(D)(4) and 134-16 in relation to Mr. Hartford's special permit argument. The board will issue an interpretation, which is as follows:

Section 134-9 of the Village Code sets forth regulations for the B-1 zoned district, located on, or immediately near Main Street, Cold Spring, NY. The proposed Hartford architectural office intends to occupy space in the former Prusseur Real Estate Office that is located lot #48.8-6-34 of the Village Tax Map. The new intended use of the subject building is as office space, for architectural design services. Such "office" use is permissible in the B-1 zoned district on Main Street (see Vill. Code § 134-9[C][5]).

Proposed construction on the existing structure on said property will encroach further into the existing front yard setback from the Main Street property line.

Subsection § 134-9(D) of the Village Code, entitled "Uses under special permit according to § 134-16," provides in sub-subsection 134-9(D)(4) thereat that the front yard setback may be no greater than the average of the front yard setbacks of the buildings on either side of the subject property (on the same side of Main Street, i.e., the north side in this case), "subject to a special

permit under § 134-16." The Zoning Board interprets this language as requiring the structure on the lot in question to be no further from the Main Street property line than the average of the two front yard setbacks of the adjacent properties to the west and east of the subject lot. The subject language appears to make no statement regarding how close a structure may be erected near the Main Street property line, and appears to only preclude the size of front yards from exceeding the size of the average of the adjoining front yards (i.e., the lots immediately to the west and east of the subject parcel on the north side of Main Street).

The adjacent property to the west of the subject parcel has a similar front yard setback whereas the adjacent property to the subject parcel's east (a gas station) has a substantial front yard set back from the Main Street property line (in excess of 25 feet). The proposed size of the front yard of the subject lot in question, as measured from the Main Street property line, clearly does not exceed the average of the size of two the front yards of the two adjoining lots on the north side of Main Street. As such, no front yard variance is warranted.

Chairman G. Gunder asked the board to agree to send an interpretation to the applicant and the building inspector.

J. Martin moved that we interpret this provision 134-9(D)(4) as per his prior comments and that there is no relief needed for this applicant from this board other than the interpretation, which requires no further action from this board. E. Hammond seconded the motion.

A poll vote was taken for the above motion with the following results:

J. Martin yes  
A. Anthoine yes  
E. Hammond yes  
G. Gunder yes

J. Martin and Chairman G. Gunder will write up the interpretation and have it reviewed by the Village Attorney.

J. Martin moved to close the public hearing and noted there were no members of the public present after they have been properly noticed. E. Hammond seconded the motion the public hearing closed by a unanimous vote at about 9:53 P.M.

A. Anthoine moved to close the meeting and E. Hammond seconded the motion. The meeting adjourned at 10:00 PM.

---

Gregory Gunder, Zoning Board of Appeals Chair

---

Date